

§ 31.3121(b)(3)–1T

26 CFR Ch. I (4–1–14 Edition)

(3) A married person who has a spouse living in the home who has a mental or physical condition which results in such spouse's being incapable of caring for such child for at least 4 continuous weeks in the calendar quarter in which the services are rendered; and

(3) Services performed by a son or daughter under the age of 21 in the employ of his or her father or mother.

(b) Under paragraph (a) (1) and (2) (i) of this section, the exception is conditioned solely upon the family relationship between the employee and the individual employing him. Under paragraph (a)(2) (ii) and (iii) of this section, in addition to the family relationship, there is a further requirement that the services performed after 1960 and before 1968 for purposes of paragraph (a)(2)(ii) and after 1967 for purposes of paragraph (a)(2)(iii) shall be services not in the course of the employer's trade or business or shall be domestic service in a private home of the employer. The terms "services not in the course of the employer's trade or business" and "domestic service in a private home of the employer" have the same meaning as when used in § 31.3121(a) (7)–1, except that it is immaterial under paragraphs (a)(2) (ii) and (iii) of this section whether or not such services are performed on a farm operated for profit. The mere fact that a mental or physical disability, whether temporary or permanent, renders a child or spouse incapable of self-support does not necessarily mean that the child requires the personal care and supervision of an adult or that the spouse is incapable of caring for a child within the meaning of paragraph (a)(2)(iii) of this section. A written statement by a doctor of the existence of the mental or physical condition of the child or spouse which states that the child requires the personal care and supervision of an adult or that the spouse is incapable of caring for a child and which sets forth the period of time during which the condition has existed and is likely to exist will usually be sufficient evidence to establish the existence and duration of the condition at the time of the statement. Under paragraph (a)(3) of this section, in addition to the family relationship, there is a further requirement

that the son or daughter shall be under the age of 21, and the exception continues only during the time that the son or daughter is under the age of 21.

(c) [Reserved] For further guidance, see § 31.3121(b)(3)–1T(c).

(d) [Reserved] For further guidance, see § 31.3121(b)(3)–1T(d).

(e) [Reserved] For further guidance, see § 31.3121(b)(3)–1T(e).

[T.D. 6516, 25 FR 13032, Dec. 20, 1960, as amended by T.D. 6744, 29 FR 8311, July 2, 1964; T.D. 7374, 40 FR 30950, July 24, 1975; T.D. 9554, 76 FR 67365, Nov. 1, 2011]

§ 31.3121(b)(3)–1T Family employment (temporary).

(a) [Reserved] For further guidance, see § 31.3121(b)(3)–1(a).

(b) [Reserved] For further guidance, see § 31.3121(b)(3)–1(b).

(c) Services performed in the employ of a corporation are not within the exceptions, except as provided in paragraph (d). Services performed in the employ of a partnership are not within the exception unless the requisite family relationship exists between the employee and each of the partners comprising the partnership.

(d) A disregarded entity that is treated as a corporation under § 301.7701–2(c)(2)(iv)(B) of this chapter (Procedure and Administration Regulations) shall not be treated as a corporation for purposes of applying section 3121(b)(3). For purposes of applying section 3121(b)(3), the owner of the disregarded entity will be treated as the employer.

(e) Paragraphs (c) and (d) of this section apply with respect to wages paid on or after November 1, 2011. However, taxpayers may apply paragraphs (c) and (d) of this section to wages paid on or after January 1, 2009.

(f) *Expiration date.* The applicability of paragraphs (c) and (d) of this section expires on or before October 31, 2014.

[T.D. 9554, 76 FR 67365, Nov. 1, 2011]

§ 31.3121(b)(4)–1 Services performed on or in connection with a non-American vessel or aircraft.

(a) Services performed within the United States by an employee for an employer "on or in connection with" a vessel not an American vessel, or "on or in connection with" an aircraft not